which requires a different degree of proof in the case of trials under section 193.

The appeals will therefore be dismissed and the convictions and sentences confirmed.

Appeal dismissed.

Solicitors for the Appellants—

Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, J.

January 3, 1935.

REX VS. NG GUAN THONG.

[SINGAPORE MAGISTRATES APPEAL No. 47 of 1934]

Criminal Procedure Code S. 297—Amendment of grounds of Appeal—New trial.

An amended petition of appeal can only be filed out of time if the respondent consents or if leave to do so has been obtained from the Court by Motion under S. 297 of the Criminal Procedure Code, otherwise the Court will not allow any new grounds of appeal contained therein to be argued.

To justify the Court in ordering a new trial in a criminal cause on the ground of fresh evidence coming to the knowledge of the accused subsequently to the trial, it must be shown that the evidence is such that it is reasonably likely that it would be believed and that such evidence at least raises the probability that the verdict might have been reversed if such evidence had been before the Court of trial.

The appellant was tried by the Singapore District Judge on a charge of criminal breach of trust in respect of a sum of $3,466.67 held by him as cashier of a firm. The defence sought to show that the deficiency in cash was accounted for by a number of payments made at various times on behalf of the firm but not entered in the firm's books at the times when such payments were alleged to have been made.

The appellant was convicted and sentenced to 4 months' rigorous imprisonment and to a fine of $500.00 or in default 4 months' rigorous imprisonment.

The Appellant gave notice of appeal on 6th September, 1934 and filed his petition of appeal on 14th September, 1934. This petition was based on various grounds including one dealing with the non-production by the prosecution of two alleged receipts for $150 and $50 respectively.

On 24th October the appellant filed an amended petition of appeal which, in addition to all the grounds contained in the original petition, prayed permission to adduce further evidence, such evidence consisting as to (a) of the said two receipts (which had throughout been in the possession of the police) and as to (b) of an alleged list of debtors of the complainant's firm. The affidavits accompanying the amended petition alleged that this list had been handed by the complainant to the appellant in 1928 in the ordinary course of the firm's business; had been in his possession ever since; and had been mislaid at the time of the trial and since found.

This amended petition prayed, in the alternative, that a new trial might be ordered so that this evidence (a) and (b) might be considered.

The D.P.P. gave notice, on the 5th November, 1934, to the Appellant that he would object to the amended petition of appeal being considered, no permission to file it having been obtained under S. 297 of the Criminal Procedure Code.

The Appellant thereafter filed a motion to adduce fresh evidence but filed no motion under S. 297 of the Criminal Procedure Code.

Knowles for Appellant.

Adrian Clark, D.P.P., for the Crown took the objection of which he had given notice, but, by consent, the appeal was nevertheless argued subject to that objection.

Cur. Ad. Vult.

The motion and the appeal were dismissed and the conviction and sentence were affirmed,

TERRELL, J. delivered an oral judgment follows:—

"With regard to the filing of the amended petition of appeal the Appellant should only have been heard on the original petition. The amended petition was out of time and (unless the respondent consented to such a course) grounds of appeal not contained in the original petition can only be argued if leave to do so has first been obtained from the Court by motion under S. 297 of the Criminal Procedure Code.

Having heard the appeal argued on the merits, the Court also rules that, had the amended petition been in time, a new trial could not have been granted. With regard to the alleged list of debtors it was incumbent on the appellant to show why this list had not been produced by him at his trial; to give a satisfactory explanation as to where it had been and why it had not been found till six weeks after the appeal had been lodged; and to explain how the document came to be produced from his custody, when, if genuine, it should presumably have remained in the custody of the firm to whose business it related. The appellant in the affidavits filed on his behalf has failed to meet these requirements.

Moreover, to justify a Court in ordering a new trial on the ground of evidence that has come to the knowledge of the appellant since his trial, it must be shewn that the evidence was such that it is reasonably likely that it would be believed and that, though it is perhaps not necessary in criminal matters to say that the evidence would certainly have reversed the verdict, it must be evidence which at least raises the probability that the verdict might have been reversed if such evidence had been before the Court of trial. In the present appeal all the allegations made by the appellant about the list of debtors have been denied by the complainant

in a counter-affidavit. The Court of Appeal would have had power, if necessary, to decide this conflict by oral evidence taken before it under the provisions of S. 304 (1) of the Criminal Procedure Code. On the facts of this case, however, it is clear that the production at the trial of the three documents, if genuine, could not have affected the verdict.

The appellant does not now contend that the original petition of appeal disclosed any ground on which the Court of Appeal ought to interfere with the verdict and sentence of the Court of trial.

The appeal therefore fails on all the grounds argued before the Court."

Appeal dismissed.

Solicitors for the Appellant:—

Braddell Brothers.

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

November 12, 1934.

HAJI SALLEH BIN HAJI ISMAIL & ANOR vs. HAJI ABDULLAH BIN HAJI MOHAMED SALLEH & ORS.

[PENANG SUIT No. 7 of 1934]

Charitable trusts—Presumption of dedication—Mohamedan Mosque.

In the case of a mosque, usage constitutes presumptive evidence of its dedication to charitable trusts.

If the founder of the trust has not actually reserved to himself the administration of the wakaf or trust or has not conferred that duty upon another, the administration must be entrusted to the Court.

Trial of Action.

The facts are sufficiently stated in the Judgment.

Ross for the Plaintiffs.

Hogan for the 1st and 2nd Defendants.

de Buriatte for the 3rd Defendants.

Cur. Ad. Vult.

WHITLEY, J.—The Plaintiffs in this case claim to have been for some thirty years the managers of the Mosque at Permatang Sungei Dua erected on land forming Lot 355 1. Mukim X. Province Wellesley and they sue on behalf of themselves and all other members of the congregation having the same interest. The 1st and 2nd Defendants claim to be trustees of the said land and mosque by virtue of an order of Court obtained by them *ex parte* on the 11th March, 1932. When in this judgment I refer to the Defendants I shall be referring to these Defendants and not the 3rd Defendants, the Mohamedan and Hindu Endowments Board who are only joined *pro forma* and against whom no relief is claimed. The Plaintiffs claim (1) To set aside the order of the 11th March, 1932, (2) A declaration that the land is wakaf (3) Appointment of new trustees and (4) an injunction restraining the Defendants from interfering in the management of the Mosque.

The following facts were either admitted or proved in the course of the hearing. Lot 355 1. which I shall refer to as "the land" was originally granted in 1831, to Penghulu Rassip and the next recorded transaction is a transfer of the land in 1879, by one Wan Dain to one Haji Dain. The latter is the grandfather of the Defendants. At the date of that transfer there was already a Mosque on the land with a burial ground attached and that Mosque and burial ground were the only mosque and burial ground which have existed in Sungei Dua within the memory of living man. That appears from the evidence of Haji Mat Arshad, a seventy years old witness called by the defence who was born in the village and has lived there all his life. That mosque was a wooden mosque which was later replaced by another wooden Mosque, which in its turn was replaced by the present stone structure erected by public subscription in 1909. From time immemorial prayers have been continuously held in these Mosques and burials taken place in the burial ground. The greater part of the Mosque is built on Lot 355 1. but a small portion of it is on Lot 355 11. The burial ground occupies Lot 355 11. with one grave only on Lot 355 1. That part of Lot 355 1. which is not covered by the actual building is vacant land with six coconut trees. On it there is a well which supplies water for the Mosque and a cooking place which is used for feasts in connection with the Mosque. The whole area of the lot including the Mosque is only 1 rood 2 poles.

Nothing of importance material to this case appears to have taken place during the lifetime of Haji Dain except the alleged dedication which is disputed. He officiated as Imam and died intestate in 1895, Letters of administration to his estate being granted in 1896 to his eldest son Haji Zachariah the father of the 2nd Defendant. In 1897, Haji Zachariah included Lot 355 1. in the affidavit which he swore as to the deceased's property and stated that all this property had already been conveyed to the next of kin. Twenty two years later—in 1919—he as Administrator executed a conveyance of this Lot together with another lot in a different Mukim to his brother Haji Mohamed Salleh (the father of the 1st Defendant) as his distributive share of the Estate. If as stated in his affidavit these Lots had already been conveyed in 1897, the reason for the 1919 conveyance is not apparent. The Plaintiffs contend that this conveyance was fraudulent and invalid inasmuch as the land was